

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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April 2, 2019

The Honorable Stephen E. Boyd
Assistant Attorney General
Office of Legislative Affairs
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20230

Dear Assistant Attorney General Boyd:

I am writing to respond to your letter on March 25, 2019, regarding the Committee's transcribed interview of John Gore on March 7, 2019.¹

As you know, this interview was part of the Committee's investigation into the addition of a citizenship question to the 2020 Census. Commerce Secretary Wilbur Ross has claimed that he added a citizenship question "solely" at the request of the Department of Justice (DOJ), but the record shows that DOJ's request was merely a pretext. Mr. Gore has knowledge that would help the Committee understand the real reason the citizenship question was added, but DOJ has refused to allow him to answer many of the Committee's key questions.

Unfortunately, your March 25 letter contains several inaccurate statements.

First, your letter asserts that Committee staff and DOJ staff had a "mutual understanding" prior to the March 7 interview that Mr. Gore "would not be able to answer questions bearing on the Department's internal deliberations." On the contrary, Committee staff told DOJ staff on several occasions that it would be unacceptable for Mr. Gore not to answer questions that are central to the Committee's investigation. For example, on March 4, Committee staff wrote: "We expect Mr. Gore to be prepared on March 7 to discuss his knowledge of key communications that led to the decision to add a citizenship question to the Census."²

¹ Letter from Stephen E. Boyd, Assistant Attorney General, Office of Legislative Affairs, Department of Justice, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Mar. 25, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/DOJ.032519.%20Response%20to%20EEC%20re%20Gore%20TI.pdf>).

² Email from Majority Staff, Committee on Oversight and Reform, to Staff, Department of Justice, and Minority Staff, Committee on Oversight and Reform (Mar. 4, 2019).

Second, your letter says you “remain open for further discussion in the accommodation process.” However, DOJ staff has repeatedly rebuffed the Committee’s proposed accommodations. During the interview, at the direction of DOJ counsel, Mr. Gore refused to answer more than 150 questions. After the interview, in an effort to accommodate DOJ’s request, the Committee identified a narrowed list of 18 priority questions and requested a second transcribed interview with Mr. Gore to address these. After a delay of more than two weeks, DOJ refused to make Mr. Gore available for a second interview, stating:

We take this request seriously but given the Department’s recognized litigation and confidentiality concerns, we are not in a position at this time to produce Mr. Gore for an additional transcribed interview.³

Third, your letter again cites “ongoing litigation” as a basis for the refusal by DOJ and Mr. Gore to answer the Committee’s questions. However, Committee staff have explained to DOJ staff numerous times that ongoing litigation is not a valid basis to withhold information from Congress. In *Hutcheson v. United States*, the Supreme Court explained:

But surely a congressional committee which is engaged in a legitimate legislative investigation need not grind to a halt whenever responses to its inquiries might potentially be harmful to a witness in some distinct proceeding, *Sinclair v. United States*, supra, at 295, or when crime or wrongdoing is disclosed, *McGrain v. Daugherty*, 273 U.S. 135, 179-180.⁴

Fourth, you claim that the Department did not have a “full and fair opportunity to review the transcript” from Mr. Gore’s interview prior to the Committee’s release of portions of the transcript. In fact, Committee staff immediately notified DOJ staff that the transcript was available for review on March 12, 2019—the same day the Committee received it from the stenographers—and made clear to DOJ staff that you needed to review the transcript the following day if you wanted to make corrections prior to the previously scheduled March 14 hearing with Commerce Secretary Wilbur Ross. On March 13, Committee staff reminded DOJ staff that the transcript would be used during the hearing and offered DOJ the opportunity again to review the transcript. DOJ staff chose not to do so. Since you did not review the transcript before the hearing, the Committee limited the release of excerpts during the hearing to only those that were essential and did not release the full transcript. Following the hearing, Committee staff worked with DOJ staff to review the transcript, which you did on March 19, 2019.

Fifth, contrary to the assertions in your letter, the Committee staff’s March 14 memorandum did not mischaracterize Mr. Gore’s statements during his interview with Committee staff:

- Your letter says it is “unfair” to state that Mr. Gore refused to answer the Committee’s questions since his failure to answer was at the direction of DOJ counsel. Of course, it is factually accurate that Mr. Gore refused to answer many

³ Email from Staff, Department of Justice, to Staff, Committee on Oversight and Reform (Mar. 22, 2019).

⁴ *Hutcheson v. United States*, 369 U.S. 599, 618 (1962).

questions, but the Committee staff's memorandum explicitly acknowledged that he did this at the direction of DOJ counsel. The memorandum explained:

During the transcribed interview, DOJ counsel instructed Mr. Gore more than 150 times not to answer specific questions from the Democratic and Republican Committee staff that are central to the Committee's investigation.⁵

- Your letter takes issue with the Committee's description of a secret memorandum and handwritten note that James Uthmeier hand-delivered to Mr. Gore, and that DOJ has withheld from the Committee. Your letter appears to claim that the existence of these documents is not "new information." In fact, Mr. Gore did provide new information about these documents during our interview, including that Mr. Uthmeier had explained to him why he planned to hand-deliver the memorandum rather than simply sending by email. However, at DOJ's instruction, Mr. Gore refused to divulge the content of the memorandum or the reason it was delivered by hand.
- Your letter also repeats the incorrect assertion that DOJ cannot produce the secret memorandum and note to the Committee because it could impact DOJ's efforts to withhold the document in separate litigation. As we have stated before, the positions DOJ may take in separate litigation are not relevant to the Committee's investigation and do not provide a valid basis to withhold information from the Committee.
- Your letter says the Committee staff's memorandum "incorrectly implies that Mr. Gore identified Mark Neuman as 'a former member of the Trump Transition Team.'" The memorandum did not do that. It simply stated the fact—which is not in dispute—that Mr. Neuman was a member of the Trump Transition Team.

Sixth, your letter claims that I mischaracterized a draft letter requesting the citizenship question that Mr. Neuman provided to Mr. Gore. That claim is incorrect. In my opening statement at the March 14 hearing, I accurately described the document from Mr. Neuman as an "initial draft letter of a letter from the Department of Justice asking for the citizenship question to be added." I did not say—because Mr. Gore refused to tell us—whether Mr. Gore incorporated concepts or language from Mr. Neuman's draft into the letter he later wrote on behalf of DOJ.

The Committee remains seriously concerned about DOJ's refusal to make Mr. Gore available to answer our key questions, as well as DOJ's refusal to produce the secret memorandum from Mr. Uthmeier and other key documents.

⁵ Supplemental Memo on Transcribed Interview with John Gore Regarding Addition of Citizenship Question to Census from Majority Staff to Committee Members, Committee on Oversight and Reform (Mar. 14, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2019-03-14.%20Supplemental%20Memo%20on%20Gore%20TI.pdf>).

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As a result, as Committee staff informed DOJ staff by email on March 29, we will seek compulsory process at our business meeting today.

Sincerely,

A handwritten signature in blue ink, reading "Elijah E. Cummings", with a stylized flourish at the end.

Elijah E. Cummings
Chairman

cc: The Honorable Jim Jordan, Ranking Member